

5. Did the Assistant Director exceed his jurisdiction by assessing benefits against American Home Assurance Company?

Respondent and its insurance carrier contend that injury to the right arm, if any, would have a date of accident in 1998, after the period of coverage by Home Assurance. For each of the above issues, the argument relates to whether there was an accidental injury during the period of American Home coverage. Respondent and American Home contend there was no accidental injury to the right upper extremity during the period of American Home coverage and, therefore, no accident arising out of and in the course of employment during the period of American Home coverage, no notice of an accident occurring on the right during the period of American Home coverage, and no written claim for an accident to the right during the period of American Home coverage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed as an order against respondent and the challenge to the order against American Home should be dismissed because it does not raise a jurisdictional issue.

Claimant worked for respondent sewing seatbelts for wheelchairs. Claimant noticed knots forming on the inside of her forearms and began having a stinging and burning sensation in the elbows May 1997.¹ Claimant reported the problem to her crew leader and was referred for medical treatment. She was first sent to Dr. Michael Geist and then to Dr. John B. Moore, IV. Although claimant testified she has bilateral symptoms and treatment records confirm this, the complaints and treatment concentrated on her left upper extremity. When cortisone injections proved inadequate, Dr. Moore did a left cubital tunnel release and lateral epicondylectomy on July 24, 1997. Dr. Moore's letter of July 1, 1997, shortly before the surgery, recommends restrictions for the use of the left upper extremity but does not mention the right. Because the employer did not have light duty which could be done with one hand, claimant was off work for approximately 11 weeks.

When claimant returned to work, she was given different job duties. She no longer worked on the seatbelts, she worked on regular straps, and claimant considered the work to be easier. Claimant testified that when she returned to work the symptoms on her left upper extremity stayed about the same. But symptoms on the right got progressively worse.

Because of the symptoms on the right, claimant's attorney referred her to Dr. Lynn D. Ketchum. Dr. Ketchum saw claimant in May 1998. He recommended

¹ The record includes a medical report, a letter report from Dr. Moore to Dr. Geist, dated May 17, 1996. This date appears to be incorrect and presumably should show the year as 1997 instead.

injections and an elbow brace for claimant's right elbow. The appealed Order requires respondent and American Home to provide that treatment.

For appeals from preliminary hearing orders, the Board has limited jurisdiction. The Board may consider contentions only that the ALJ exceeded his or her jurisdiction. K.S.A. 1997 Supp. 44-551. This includes appeals from findings on the jurisdictional issues identified in K.S.A. 1997 Supp. 44-534a.

The Board finds other questions raised are not jurisdictional. Specifically, the Board concludes that the decision regarding the identify of the appropriate insurance carrier is not a jurisdictional question. The finding as to the date of accident is also not a jurisdictional finding by itself and where it does not determine a jurisdictional issue such as notice or timely written claim. In this case, the date of accident only determines insurance coverage, a non-jurisdictional question, and does not control the other jurisdictional issues.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Assistant Director Brad E. Avery on June 4, 1998, should be, and is hereby, affirmed as to the respondent and dismissed as to American Home Assurance Company because it does not raise a jurisdictional question.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

c: Chris Miller, Lawrence, KS
John B. Rathmel, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director